IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.02.2005

Coram

The Honourable Mr. Justice P.K.MISRA

Writ Petition No.3462 of 1998

1.Senior Divisional
Personnel Officer,
Southern Railway,
Tiruchirapalli - 620001.

2.Divisional Railway Manager,
Southern Railway,
Tiruchirapalli -620001. .. Petitioners

vs.

1.R.Lakshmipathi
2.The Presiding Officer,
The Central Government
Labour Court,
Chennai - 600104. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issue of Writ of Certiorari to call for the records relating to C.P.No.41/95 dt.9.1.1997 from the file of the 2nd respondent and to quash the same.

For petitioner: Mr. M.Sekar

For respondent: Mr.K.M.Ramesh for R1

O R D E R

Heard the learned counsel appearing for the parties.

2. The present Writ Petition has been filed by the Senior Divisional Personnel Officer and the Divisional Railway Manager, Southern Railway against the order dated 9.1.1997 in C.P.No.41/95 passed by the Central Government Labour Court, Madras in purported exercise of jurisdiction under Sec.33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act').

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3. The present respondent had filed a Claim Petition in C.P. No.41/95 before the said Labour Court. The respondent, who had entered service on 17.8.1958 as Kalasi in course of time had become Assistant Guard, was removed from the service on 5.7.1994. Such removal was apparently on the ground that the respondent had been punished in a criminal case relating to unauthorised possession of railway properties. It is not in dispute that such order of removal has not been set aside by any authority. The applicant in the Claim Petition claimed that some other employees who were similarly penalised had been subsequently given the benefits and therefore, there is no reason why it should not be made available to him.

4. A counter was filed by the present petitioners in the said Claim Petition, wherein it was indicated that the claimant was convicted on 18.3.1993 in Crime No.18/92 for having committed the offence under Sec.3(a) of the Railway Properties - Unlawful Possession Act and subsequently, upon such order of the punishment of Criminal Court, the order of removal from the service has been passed with effect from 5.7.1994. It was further indicated that a proceeding under Sec.33-C (2) of the Act was not maintainable. In respect of other employees, it was indicated that, the cases were pending and had not been finalised and in respect of one employee, upon acquittal, the benefits were given. The Presiding Officer of the Labour Court held that the present respondent was discriminated against being deprived of the benefits inasmuch as similar benefits had been given to some other persons and therefore, the benefits should be made available to the present respondent. This order has been challenged in the present Writ Petition.

5. Learned counsel appearing for the petitioner has contended that in a proceeding under Sec.33-C(2), the Labour Court acts as an Executing Court and in the absence of any determination of the entitlement of the person concerned, the Labour Court under Sec.33-C(2) is not authorised to decide about the entitlement of the concerned workman for the aforesaid purpose. He has placed reliance upon the decision reported in 1995 (1) Supreme Court Cases 235 (Municipal Corporation of Delhi vs. Ganesh Razak and another) in the aforesaid context, wherein after referring to several other decisions of the Supreme Court, it was observed that,

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> "12. The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the

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benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Sec.33-C(2) like that of Executing Court's power to interpret the decree for the purpose of its execution."

6. In the present case, there is no dispute that the order of removal has not been set aside by any competent forum, nor it is declared to be illegal by any competent Court. The observation of the Labour Court that some other employees were given similar benefits cannot be a ground for the Labour Court for exercising jurisdiction under Section 33-C(2) and direct payment of such benefits, the right to which is yet to be decided by the competent forum. It is quite obvious that the Presiding Officer has exceeded his jurisdiction in giving direction for payment of the terminal benefits even when the order of removal of the present respondent has not been set aside by any competent Court and the entitlement of the applicant before the Labour Court was seriously disputed. Such order cannot be sustained and is hereby quashed.

7. Learned counsel appearing for the petitioner submits that it is not known as to whether subsequently the order of the conviction of the first respondent has been set aside by the appellate or revisional authority. It is made clear that in case, the order of punishment, which was the basis of the order of removal from the service insofar as the first respondent is concerned, has been subsequently set aside by the appellate or revisional authority, it would be open to the first respondent to claim any benefit as available under law. Subject to the aforesaid observation, the Writ Petition is allowed and the order dated 9.1.1997 in C.P.No.41/95 passed by the Central Government Labour Court, Madras is quashed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

The Presiding Officer,
The Central Government
Labour Court,
Chennai - 600104.

one cc to Mr.M.Sekar, Advocate SR.5845.

One cc to Mr.K.M.Ramesh, Advocate SR.5819.

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MM [co]
MK

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